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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,495	03/24/1999	VLADIMIR GARTSTEIN	7081M	9817

7590

06/13/2003

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EXAMINER

MERCADO, JULIAN A

ART UNIT

PAPER NUMBER

1745

DATE MAILED: 06/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/275,495

Applicant(s)

GARTSTEIN ET AL.

Examiner

Julian A. Mercado

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14-22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12, 14-22, 28 and 29 is/are allowed.
- 6) ☐ Claim(s) 1-11, 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Remarks***

This Office Action is responsive to applicant's "Amendment C" filed March 24, 2003.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai et al.

Nagai has been discussed extensively in the previous Office Action(s). The rejection is maintained for the reasons of record.

Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagai et al. as applied for claims 1-7 and 24-27 above, in view of Stewart.

Nagai and Stewart have been discussed extensively in the previous Office Action(s). The rejection is maintained for the reasons of record.

### ***Response to Arguments***

Applicant's arguments filed with the present amendment have been fully considered but they are not persuasive.

The present claims have been amended so as to recite that the controller is "adapted for use in primary and secondary batteries". Applicant acknowledges the conversation held on

Art Unit: 1745

March 14, 2003 between examiner Mercado and applicant's representative, Mr. Jon Christensen (with examiner Kalafut participating through third-party consultation by examiner Mercado), where it was mutually agreed upon by all parties that if the claimed controller can be shown to be structurally different than that disclosed in Nagai et al., then the presently amended claims would be allowable. However, applicant's arguments directed thereto is not found to persuasively show an immediate structural distinction between Nagai's controller and that claimed by applicant (reasons to follow).

First, applicant's arguments appear to be contradicting, in that while applicant states that the examiner appears to be mistaken in asserting that Nagai et al. is absent of any internal impedance of the battery cell, applicant also states that "a person of skill in the art would recognize that certain charge or discharge conditions within a cell can result [in] a variable internal battery impedance." (last paragraph of response on page 4 continuing onto page 5) Applicant appears to negate the battery of Nagai et al. having an inherent possession of an internal impedance, while also stating that this property would be inherently obvious to the skilled artisan.

Applicant submits that the controller of the present invention "would accommodate the varying resistance" of the cell and would be structurally different than a controller such as in Nagai et al. that "uses a fixed resistance". This argument is not persuasive, however, as such limitation of the instant cell having a "varying resistance" is outside the scope of the present claims.

As to the present amendment language in reciting that the controller is "adapted for use in" both primary and secondary batteries, this limitation has not been given patentable weight

Art Unit: 1745

absent of a more clear structural delineation between the controller in Nagai et al. and that sought to be patented by applicant. Thus, the amendment to the present claims is not considered to further limit the scope of the claims.

The examiner notes that no arguments were submitted in connection with the Stewart reference.

In view of the foregoing, the prior art rejections are maintained for the reasons of record.

***Allowable Subject Matter***

Claims 12, 14-22, 28 and 29 are allowed for the reasons set forth in a prior Office Action.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1745

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian A. Mercado whose telephone number is (703) 305-0511.

The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam

June 11, 2003



Patrick Ryan  
Supervisory Patent Examiner  
Technology Center 1700